

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

CC:WR:LAD:LA:TL-N-2918-00  
AMNeal

date:

to: Diane Cheng, Revenue Agent  
El Monte Post-Of-Duty, FE 1706

from: District Counsel, Los Angeles District, Los Angeles

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subject:

Validity of Consent Form 872  
TL-N-2918-00

This memorandum is in response to your request for advice dated May 11, 2000.

Disclosure Statement

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

Question Presented

Whether a valid Form 872, Consent to Extend the Time to Assess Tax, has been executed prior to the expiration of the statute of limitations for the [REDACTED] tax year.

Short Answer

(b)(7)a, (b)(5)(AC)

(b)(7)a, (b)(5)(AC)

(b)(7)a, (b)(5)(AC)

Statement of the Facts

The taxpayer in this case is [REDACTED] (hereinafter "taxpayer"). The medical corporation is wholly owned by [REDACTED] (hereinafter "sole-shareholder"). The Commissioner's computer records reflect that the taxpayer's [REDACTED] corporate income tax return, Form 1120, was due on [REDACTED]. The return, however, was not filed until [REDACTED].

Based on the information provided by revenue agent, Diane Cheng, the facts of this matter are as follows. In [REDACTED], an examination began on the issue of the taxpayer's employee welfare benefit plan. Initially, the years under review were [REDACTED] and [REDACTED]. However, in [REDACTED], the Commissioner decided to open the taxpayer's [REDACTED] tax return for examination on the same issue. In connection therewith, the sole shareholder's [REDACTED] individual return was also selected for examination.

On [REDACTED], the revenue agent solicited a Form 872, Consent to Extend the Time to Assess Tax, (hereinafter "Form 872") for the [REDACTED] tax year from the taxpayer. As indicated on the case history sheet, the revenue agent solicited this Form 872 by physically delivering the Form 872 to the sole-shareholder at the corporate business office. The case history sheet also notes that the revenue agent informed the sole-shareholder that he has the right to refuse to sign the statute extension. The revenue agent also informed the sole-shareholder that if the statute was not extended, then a notice of deficiency would be issued. The sole-shareholder signed the Form 872 on [REDACTED], and it was executed by the group manager on [REDACTED]. The concern in this case is the validity of the [REDACTED] statute extension.

It is Counsel's understanding that at the time the [REDACTED] statute extension was solicited, the revenue agent did not provide the sole-shareholder with Letter 907 or Publication 1035. On this occasion, the only notice that was provided to the sole-shareholder was that he had the right not to sign the Form 872, and if the form was not signed, then a notice of deficiency would be issued. Although not informed of all of the rights under the provision of I.R.C. § 6501(c)(4)(B), prior to this solicitation,

and in connection with the examination of the [REDACTED] and [REDACTED] tax years, the sole-shareholder was provided with Letter 907 and Publication 1035 on [REDACTED]. The Publication 1035 that was provided to the sole-shareholder on [REDACTED] was the [REDACTED] revised version of the publication.

In addition, the revenue agent represented to Counsel that Publication 1035 was provided to the sole-shareholder in connection with the extension of the sole-shareholder's individual income tax return for [REDACTED]. Counsel has previously considered the validity of the Form 872 executed with regard to the [REDACTED] individual return of the sole-shareholder. With regard to that statute extension for the individual return, Counsel's understanding is that Publication 1035 was not provided to the taxpayer until [REDACTED].

#### Discussion

The question posed in this matter is whether the statute of limitations for the [REDACTED] tax year has expired. As a general rule, the amount of any determined corporate income tax may be assessed within three years after the filing of the relevant return. I.R.C. §6501(a). Pursuant to I.R.C. 6072(b), the corporate income tax return must be filed on or before the fifteenth day of the third month following the close of the taxable year. Thus, since the taxpayer utilized a calendar year end, absent an extension, the due date of the taxpayer's corporate return for [REDACTED] was [REDACTED]. The Commissioner's computer records reflect that the return was not filed until [REDACTED].<sup>1</sup> Therefore, the three year statutory period would expire on [REDACTED], unless an exception is otherwise applicable.

Once such exception is provided in I.R.C. § 6501(c)(4). This section provides that the limitation period for assessment of an individual's tax liability can be extended by written agreement signed by both the Secretary and the taxpayer. Id. This written agreement must be executed prior to the expiration of the applicable statute of limitations. Id. In the immediate case, the written agreement (Form 872) was secured prior to the expiration of the applicable limitations period, however, there is an issue as to whether the Form 872 is valid because the

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<sup>1</sup>Commissioner's records reflect that an extension to file an income tax return was not filed until [REDACTED]. Thus, the corporate income tax return was not timely filed within the provisions of the Internal Revenue Code.

taxpayer may not have been adequately informed of its rights pursuant to the provisions of I.R.C. § 6501(c)(4)(B).

I.R.C. § 6501(c)(4)(B) is effective for requests to extend the period of limitations made after December 31, 1999. The text of I.R.C. § 6501(c)(4)(B) provides:

"NOTICE TO TAXPAYER OF RIGHT TO REFUSE OR LIMIT EXTENSION.--The Secretary shall notify the taxpayer of the taxpayer's right to refuse to extend the period of limitations, or to limit such extension to particular issues or to a particular period of time, on each occasion when the taxpayer is requested to provide such consent."

The language of this provision indicates that the time the request was made governs whether or not the provisions of I.R.C. § 6501(c)(4)(B) govern the validity of a statute extension. The term "made" does not mean executed, it refers to the act of making the request. A request for consent is made by asking the taxpayer to sign a Form 872. In this case, since the request was not made until after December 31, 1999, the new procedures under I.R.C. § 6501(c)(4)(B) apply in determining the validity of the statute extension.<sup>2</sup>

I.R.C. § 6501(c)(4)(B) does not require that notification be provided to the taxpayer in written form. As such, it is Counsel's opinion that providing oral notification to the taxpayer of their rights under I.R.C. § 6501(c)(4)(B) is sufficient.<sup>3</sup> However, the case file must clearly reflect that such oral notification was provided.

In this case, the case history sheet reflects that on [REDACTED], the revenue agent solicited the Form 872 from the taxpayer's sole-shareholder. On this date, the revenue agent did not provide a copy of Publication 1035 to the sole-shareholder, however, the revenue agent informed the sole-shareholder that he had the right to refuse to sign the statute

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<sup>2</sup>This provision of the Internal Revenue Code was enacted as part of the IRS Restructuring and Reform Act of 1998, and is effective for all requests made after December 31, 1999. Whether or not the revenue agent was aware of the requirements of the new provision is irrelevant in determining the validity of the statute extension.

<sup>3</sup>Be advised that although oral notification is permitted under I.R.C. § 6501(c)(4)(B), Counsel recommends that written notification be provided to the taxpayer.

extension. The case history sheet does not reflect that the revenue agent informed the sole-shareholder that he also had the right to limit the extension to particular issues or that he had the right to limit the extension to a particular period of time.<sup>4</sup>

The National Office has indicated that the notice provisions of I.R.C. § 6501(c)(4)(B) must be strictly complied with. The statute specifically provides that each time an extension is solicited the taxpayer must be notified of its rights. I.R.C. § 6501(c)(4)(B). This is true even if the sole-shareholder was notified of his rights on [REDACTED] in a manner that meets the requirements under the new statute.

[REDACTED]  
(b)(7)a, (b)(5)(AC)

(b)(7)a, (b)(5)(AC)

[REDACTED]  
(b)(7)a, (b)(5)(AC)

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<sup>4</sup>Based on discussions with the National Office, Counsel recommends that Service personnel should be as specific as possible in documenting the case file as to the rights communicated to the taxpayer. Service personnel should list the date the request was made, and what, exactly, was told to the taxpayer. The National Office has indicated that the best practice would be for the case history sheet to specifically detail all three rights. Further, Service personnel should go into excruciating detail when documenting what rights were explained to the taxpayer, including reciting the rights which were provided to the taxpayer.

[REDACTED]  
(b)(7)a, (b)(5)(AC)

(b)(7)a, (b)(5)(AC)

[REDACTED]  
(b)(7)a, (b)(5)(AC)

At this time we are closing our file in this matter. However, any questions regarding this memorandum should be directed to Angelique M. Neal at (213) 894-3027 ext. 174.

JAMES A. NELSON  
District Counsel

By: \_\_\_\_\_  
ANGELIQUE M. NEAL  
Attorney

CC: Linda Cuneo, Statute Coordinator